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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 415

TERRENCE DRUGGAN, APPELLANT

v.

PALMER E. ANDERSON, UNITED STATES MARSHAL, etc., and Wesley Westbrook, Superintendent of the Cook County Jail of Cook County, Illinois

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLEES

This is an appeal from the order of the United States District Court for the Northern District of Illinois dismissing the petition for a writ of *habeas corpus* (p. 26). The case is not officially reported below and there is no opinion printed in the record.

JURISDICTION

Apparently the jurisdiction of this Court is invoked under Section 238 of the Judicial Code upon the constitutional ground. The order ap-

pealed from is dated April 22, 1925 (p. 26), and the appeal was allowed the same day.

THE QUESTIONS INVOLVED

The petition for *habeas corpus* was based upon the claim that Title II of the National Prohibition Act of October 28, 1919, c. 85, 41 Stats. 305, 307, with the exception of Sections 1, 27, 37, and 38, is unconstitutional (pp. 2 and 3) and that the injunctional order for the violation of which appellant was in custody was void for the further reason that it was issued without notice contrary to Equity Rule 73 (p. 4). The court overruled these contentions and dismissed the petition. This appeal followed.

On June 1st, 1925, this Court denied an application for bail pending appeal, and set the case for argument on October 5th.

STATEMENT OF THE CASE

From the petition it appears that on February 6, 1924, a bill was filed by the United States against the petitioner and other persons in a proceeding under Section 22 of Title II of the National Prohibition Act to enjoin a nuisance; that a temporary injunction was obtained by the Government on February 7, 1924, without notice to the petitioner; that on June 9, 1924, the Government filed an information pursuant to Section 24, Title II of the same Act, to show cause why

petitioner and the others should not be punished for contempt of court for violating the injunction; that thereafter petitioner was convicted of violating the order and was sentenced to imprisonment in the Cook County jail for one year and fined $1,000 (p. 1); that petitioner sued out a writ of error from the Circuit Court of Appeals for the Seventh Circuit to review said judgment; that said Circuit Court of Appeals affirmed the judgment; and that his commitment followed (p. 1).

From the exhibits attached to the petition it appears that the bill of complaint containing the prayer for a temporary injunction, together with a supporting affidavit, was filed February 6, 1924 (p. 12), and a further supporting affidavit was filed on February 7, 1924 (p. 14). That the answer of the defendants, including Druggan, was filed March 31, 1924 (p. 20). In this answer the defendants admit "that said suit is of a civil nature arising under the Constitution and laws of the United States, and that jurisdiction thereof is given to this Honorable Court by Section 22 of Title II of said Act of Congress and by Section 26 of the Judicial Code of the United States" (p. 17).

In the information for contempt it is alleged that the temporary injunction was served on Druggan on or about the 24th day of March, 1924 (p. 21), and that the acts in violation of the injunction were committed on the 31st day of

May, 1924, the 2nd and 3rd days of June, 1924 (pp. 22, 23). The charge was that Druggan and the others had removed from the premises 800 barrels of beer and caused them to be placed on railroad cars. The answer to the information for contempt was merely a general denial (p. 24).

The offense was, therefore, willful and deliberate; after due notice of the bill and the injunction, and after formal admission of the jurisdiction of the Court.

He began to serve his sentence on November 11th, 1924 (p. 6). Therefore, with good conduct allowances, he might have been free ere this. (Act of June 21, 1902, ch. 1140, 32 Stat. 397.)

ASSIGNMENTS OF ERROR

The assignments of error (pp. 27–31) are eleven in number with many subdivisions, but in the brief filed in this court only four points are urged:

(1) That Title II of the National Prohibition Act was enacted before the Eighteenth Amendment went into effect as a part of the Constitution and is therefore unconstitutional.

(2) Section 24 of Title II is an invasion of the judicial power and therefore unconstitutional.

(3) Section 24 of Title II violates the Sixth Amendment of the Constitution.

(4) The injunctional order upon which the judgment is founded is void for want of jurisdiction to enter it.

These points will be considered in their order.

ARGUMENT

I

Title II of the National Prohibition Act was not enacted before the Eighteenth Amendment became a part of the Constitution

The fundamental error of the appellant's position is the claim that the National Prohibition Act was passed before the Eighteenth Amendment "went into effect," and is based upon a misconception of certain language used by this Court in *Dillon* v. *Gloss*, 256 U. S. 368. The complete paragraph of that opinion, from which appellant quotes an excerpt in his brief, is as follows (256 U. S. 376):

> The provisions of the act which the petitioner was charged with violating and under which he was arrested (Title II, §§ 3, 26) were by the terms of the act (Title III, § 21) to be in force from and after the date when the Eighteenth Amendment should go into effect, and the latter by its own terms was to go into effect one year after being ratified. Its ratification, of which we take judicial notice, was consummated January 16, 1919. That the Secretary of State did not proclaim its ratification until January 29, 1919, is not material for the date of its consummation, and not that on which it is proclaimed, controls. It follows that the provisions of the act with which the petitioner is concerned went into effect January 16, 1920. His alleged offense

> and his arrest were on the following day; so his claim that those provisions had not gone into effect at the time is not well grounded.

It is plain that this court in using, with respect to the Eighteenth Amendment, the language, " was to go into effect one year after being ratified," referred to the time when the prohibition contemplated by the Amendment should become effective, that is, when intoxicating beverages should be outlawed. By Article 5 of the Constitution, amendments—

> shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof,

The language of Section 1 of the Amendment is:

> After one year from the ratification of this article the manufacture * * * of intoxicating liquors * * * is hereby prohibited.

The ratification of the Eighteenth Amendment, of which fact this Court took judicial notice, was consummated January 16, 1919. Therefore, by express provision of the Constitution, it then became " valid to all intents and purposes " as part of the Constitution, and Congress and the several States thereupon had concurrent power under Section 2 of the Amendment to provide for its enforcement. The Bill was passed over the veto of

the President on October 28, 1919, 41 Stats. 323, and thereupon became law, though its provisions did not " go into effect " until January 16, 1920.

Nothing more need be said on this point.

II

Section 24 of Title II is not unconstitutional as being an invasion of the judicial power

Section 24 provides (41 Stat. 315):

> Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not less than $500 nor more than $1,000, or by imprisonment of not less than thirty days or more than twelve months, or by both fine and imprisonment.

The appellant's objection to this provision is that it fixes a minimum as well as a maximum penalty, and thereby encroaches upon the judicial power. This claim seems to us to be wholly without merit. In the case of *Michaelson* v. *The United States,* 266 U. S. 42, this court had under consideration the constitutionality of sections 21 and 22 of the Clayton Act of October 15, 1914, c. 323, 38 Stats. 738, which provided for trial by jury of certain contempts of court. Delivering the opinion of the court holding the statute constitutional, Mr. Justice Sutherland, at pages 65–66, said:

> But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is in-

herent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power. So far as the inferior federal courts are concerned, however, it is not beyond the authority of Congress (*Ex parte Robinson,* 19 Wall. 505, 510–511; *Bessette* v. *W. B. Conkey Co.,* 194 U. S. 324, 326); but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative. That it may be regulated within the limits not precisely defined may not be doubted. The statute now under review is of the latter character. It is of narrow scope, dealing with the single class where the act or thing constituting the contempt is also a crime in the ordinary sense. It does not interfere with the power to deal summarily with contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice, and is in express terms carefully limited to the cases of contempt specifically defined. Neither do we think it purports to reach cases of failure or refusal to comply affirmatively with a decree—that is, to do something which a decree commands—which may be enforced by coercive means or remedied by purely compensatory relief. If the reach of the statute had extended to the cases which are ex-

cluded a different and more serious question would arise.

Section 22 of the Clayton Act limited the fine to be imposed and paid to the United States to the sum of $1,000 and limited imprisonment to the term of six months. Certainly, if it is within the power of Congress to requre a trial by jury and to limit the sentence to be imposed by the court upon conviction, it is within the power of Congress to fix a minimum penalty. It does not tend to render "practically inoperative" or "abrogate" the inherent power of the court. On the contrary, it tends to dignify the courts and uphold their hands in the performance of their duty by making wilful disobedience to their commands a serious offense.

We do not see how the appellant is in a position to advance this argument. The record does not indicate that the trial judge was embarrassed by reason of his inability to impose upon Druggan a small fine. He gave him the maximum penalty of the law.

At the time of the adoption of the Eighteenth Amendment state statutes containing similar provisions had been in force for many years; had been uniformly upheld and their provisions containing minimum penalties for contempt of court had never, so far as we can ascertain, been seriously questioned. The statute of Iowa considered by this Court in *Eilenbecker* v. *Plymouth County,* 134 U. S. 31, provided for the abatement of liquor

nuisances by injunction and for punishment for contempt thereof by a fine of not less than $500 nor more than $1,000, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. The statute is set forth in a footnote in 134 U. S. 35.

The statute of Kansas considered by this Court in *Mugler* v. *Kansas,* 123 U. S. 623, set forth at length in the opinion of this Court in 123 U. S. 670, provided a penalty for violating an injunction of not less than $100 nor more than $500, or by imprisonment for not less than thirty days nor more than six months, or by both such fine and imprisonment. The following statutes contain minimum penalties to be imposed upon conviction for contempt of court in liquor cases and, so far as we are advised, have never been held to be invasions of the judicial power.

Arkansas: Sec. 7, Act 109, Acts of Ark., 1915, pp. 408, 413. Minimum penalty, 30 days.

Colorado: Sec. 3706, Comp. Laws 1921. Minimum penalty not less than $100 or 30 days' imprisonment.

District of Columbia: Sec. 14, Act Mar. 3, 1917, 39 Stat. 1123. Minimum penalty, $100 or 30 days' imprisonment.

Indiana: Sec. 8356w, Ind. Ann. Stat. (Burns), Vol. 6, p. 1400. Minimum penalty, $100 and 30 days' imprisonment.

Iowa: Sec. 2029, Code 1924, p. 302. Minimum penalty, first offense, $200 or 3 months' imprisonment, or both. Minimum penalty, second offense, $500 or one year hard labor.

Kansas: Ch. 21, Sec. 2131, Rev. Stat. Kans. 1923, p. 406. Minimum penalty, $100 and 30 days.

Montana: Sec. 11128, c. 30, Rev. Code 1921, Vol. 4, p. 131. Minimum penalty, $100 or 30 days.

Nebraska: Sec. 3264, ch. 33, Comp. Stat. 1922, p. 1093. Minimum penalty, $200 or 3 months.

North Dakota: Sec. 10118, Comp. Laws 1913, p. 2327. Minimum penalty, first offense, $200 and 90 days. Second offense, minimum penalty, one year.

Oregon: Sec. 2224–35, Ore. Laws (Olson) 1920, Vol. 1, p. 1285. Minimum penalty, $100 or 30 days.

South Dakota: Sec. 10296, Rev. Code 1919, Vol. 2, p. 2682–3. Minimum penalty, $200 and 30 days, first offense. Second offense, minimum penalty six months.

Tennessee: Sec. 5164a12, Ann. Code 1918, Vol. 5, p. 5270. Minimum penalty, 30 days.

Virginia: Sec. 4675 (90), Code 1924, p. 1131. Minimum penalty, $100 and one month imprisonment.

West Virginia: Sec. 1293, Code of West Va. Suppl. 1918, p. 252. Minimum penalty, $100 and 30 days' imprisonment.

III

Section 24 of Title II of the National Prohibition Act does not violate the Sixth Amendment to the Constitution

The appellant claims that Section 24 of the Act violates the Sixth Amendment providing for jury trials in criminal prosecutions and says: "If the section is to stand at all, it must stand as a definition of a newly created crime to be tried without a jury." (Brief, p. 42.) Criminal contempts, however, have been recognized as triable by the court without a jury for too many years to be called "newly created crimes." That courts have inherent power to punish as for contempt violations of their orders is too well settled to be open to further argument.

Myers v. *United States,* 264 U. S. 95.
Gompers v. *Bucks Stove & Range Co.,* 221 U. S. 418.
Eilenbecker v. *Plymouth County,* 134 U. S. 31.
Mugler v. *Kansas,* 123 U. S. 623.
In re Debs, 158 U. S. 564.
Interstate Commerce Commission v. *Brimson,* 154 U. S. 447.
Ex parte Terry, 128 U. S. 289.
Cartwright's Case, 114 Mass. 230.

The moment the courts of the United States were called into existence and vested with jurisdiction over any subject, they became possessed of this power. *Ex parte Robinson,* 19 Wall. 505.

In the case of *Myers* v. *The United States,* 264 U. S. 95, a case arising under the contempt provisions of Section 21 of the Clayton Act of October 15, 1914, c. 323, 38 Stats. 730, an attempt was made to distinguish between so-called statutory contempts and contempts under the doctrine of the inherent power of the courts. It was urged that ordinary contempts punishable by courts of equity without trial by jury differed radically from the so-called statutory contempt under the Clayton Act, and it was urged that Sections 51, 52, and 53 of the Judicial Code controlled the venue when such statutory contempts were alleged; specifically, that the plaintiffs in error should have been tried in the district where their offenses had been committed. Mr. Justice McReynolds, delivering the opinion of the court, said, page 103:

> None of the cited Code sections makes specific reference to contempt proceedings. These are *sui generis*—neither civil actions nor prosecutions for offenses, within the ordinary meaning of those terms—and exertions of the power inherent in all courts to enforce obedience, something they must possess in order properly to perform their functions.

This specific point arising under Section 24 of the National Prohibition Act has been considered and the validity of the section upheld in *United States* v. *Cohen,* 268 Fed. 420; *Lewinsohn* v. *United*

States, 278 Fed. 421 (C. C. A. 7th Cir.); *Wedel* v. *United States,* 2 Fed. (2d) 463 (C. C. A. 9th Cir., November, 1924); *Denapolis* v. *United States,* 3 Fed. (2d) 722 (C. C. A. 5th Cir., January, 1925).

Cases in which this question has been decided adversely to the claim now made have been presented to this Court upon petitions for writs of certiorari and uniformly the petitions have been denied. See *Lewinsohn* v. *United States,* 258 U. S. 630; *Heintz* v. *United States,* 263 U. S. 715; *Douglas* v. *United States,* 264 U. S. 590; *Keystone Brewing Co.* v. *United States,* denied April 20, 1925.

In *Eilenbecker* v. *Plymouth County,* 134 U. S. 31, Mr. Justice Miller, speaking for the Court, discussed at length the question of the right of courts to punish for contempt without a jury trial. This was a case that rose in the State of Iowa under a statutory provision much like the section of the Prohibition Act which we are here considering. The contention there made was that the Iowa statute was repugnant to the Fourteenth Amendment. He said (p. 39):

> So that the proceeding by which the fine and imprisonment imposed upon these parties for contempt in violating the injunction of the court, regularly issued in a suit to which they were parties, is due process of law, and always has been due process of law, and is the process or proceeding by which courts have from time immemorial enforced the execution of their orders and

decrees, and can not be said to deprive the parties of their liberty or property without due process of law.

He then proceeded to say:

> The counsel for plaintiffs in error seek to evade the force of this reasoning by the proposition that the entire statute under which this injunction was issued is in the nature of a criminal proceeding, and that the contempt of court of which these parties have been found guilty is a crime for the punishment of which they have a right to trial by jury.
>
> We can not accede to this view of the subject. Whether an attachment for a contempt of court, and the judgment of the court punishing the party for such contempt, is in itself essentially a criminal proceeding or not, we do not find it necessary to decide. We simply hold that, whatever its nature may be, it is an offence against the court and against the administration of justice, for which courts have always had the right to punish the party by summary proceeding and without trial by jury; and that in that sense it is due process of law within the meaning of the Fourteenth Amendment of the Constitution. We do not suppose that that provision of the Constitution was ever intended to interfere with or abolish the powers of the courts in proceedings for contempt, whether this contempt occurred in the course of a criminal proceeding or of a civil suit.

The case of *Mugler* v. *Kansas*, 123 U. S. 623, arose under the prohibition laws of the State of Kansas, which contained provisions for the abatement of liquor nuisances by injunction and the punishment of violators of injunctions as for contempt. In upholding those laws, Mr. Justice Harlan, speaking for the Court, rendered an exhaustive opinion, and said, among other things (pp. 672–3):

> Equally untenable is the proposition that proceedings in equity for the purposes indicated in the thirteenth section of the statute are inconsistent with due process of law. "In regard to public nuisances," Mr. Justice Story says, "the jurisdiction of courts of equity seems to be of a very ancient date, and has been distinctly traced back to the reign of Queen Elizabeth. The jurisdiction is applicable not only to public nuisances, strictly so called, but also to purprestures upon public rights and property. * * * In case of public nuisances, properly so called, an indictment lies to abate them, and to punish the offenders. But an information, also, lies in equity to redress the grievance by way of injunction." 2 Story's Eq. Sections 921, 922. The ground of this jurisdiction in cases of purpresture, as well as of public nuisances, is the ability of courts of equity to give a more speedy, effectual, and permanent remedy, than can be had at law. They can not only prevent nuisances that are threatened, and before irreparable mischief ensues, but arrest or abate those in

> progress, and, by perpetual injunction, protect the public against them in the future, whereas courts of law can only reach existing nuisances, leaving future acts to be the subject of new prosecutions or proceedings. This is a salutary jurisdiction, especially where a nuisance affects the health, morals, or safety of the community. * * *
>
> As to the objection that the statute makes no provision for a jury trial in cases like this one, it is sufficient to say that such a mode of trial is not required in suits in equity brought to abate a public nuisance. * * *

The effect of the Eighteenth Amendment was to give to Congress the same police powers to stamp out the manufacture, sale, and transportation of liquor that the States had before the Amendment. *United States* v. *Cohen,* 268 Fed. 420, 425.

It can not be said that statutory remedies, theretofore used and found to be effective by the States for a long period of years, which had been bitterly assailed upon almost every conceivable ground and uniformly sustained, are unconstitutional when adopted by Congress as "appropriate legislation."

IV

The injunction order upon which the contempt proceedings were based was not void because issued without notice

The appellant relies upon Rule 73 of the Equity Rules and claims that its effect is to prohibit the

exercise of the injunctive power without complying with its terms. He says (Brief p. 50):

> Unless notice of the application for an injunction be given to the defendants, the District Court is shorn of power to act. Thus the rule goes to the jurisdiction of the court to enter an injunctural order.

Section 22 of the National Prohibition Act, so far as material is as follows (41 Stat. 314):

> SEC. 22. An action to enjoin any nuisance defined in this title may be brought in the name of the United States by the Attorney General of the United States or by any United States attorney or any prosecuting attorney of any State or any subdivision thereof or by the commissioner or his deputies or assistants. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the liquor or fixtures, or other things used in connection with the

> violation of this Act constituting such nuisance. * * *

It appears, therefore, that the Court is empowered to issue a temporary injunction "forthwith." This language can mean nothing less than what it says. "Forthwith" does not mean after notice, and if inconsistent with Rule 73 must be considered to have superseded it. The contention now made has been passed upon twice by the Circuit Court of Appeals for the Seventh Circuit. *Lewinsohn* v. *United States,* 278 Fed. 421; *McFarland* v. *United States,* 295 Fed. 648. In the *McFarland case* the Court said (p. 649):

> (1) The temporary "writ of injunction," as it is termed, was issued without notice, and is attacked as absolutely void (because of equity rule No. 73 and section 17 of the Clayton Act [Comp. St. Sec. 1243a].) Its violation, so it is contended, affords no basis for criminal contempt proceedings.
>
> This same question was presented to us, and decided adversely to plaintiffs in error in *Lewinsohn* v. *United States,* (C. C. A.) 278 Fed. 421. Counsel for plaintiffs in error, while recognizing the effect of this holding, earnestly urge us to reconsider the views there expressed, and to reconcile section 22 of the National Prohibition Act with the practices prescribed by equity rule No. 73 and the section of the Clayton Act referred to. We have given further study to the question, with the result that our conclu-

sion respecting the intent and purpose of Congress in enacting section 22 of the National Prohibition Act has been confirmed.

That there is a repugnancy between section 22 of this latter act and equity rule No. 73 and section 17 of the Clayton Act must be conceded. It is also apparent, we think, that it was the obvious and the expressed intention of Congress, in enacting the National Prohibition Act, to make an exception to the general rule and prescribe a specific code of practice or procedure which governs equity suits authorized by the act to be brought to abate nuisances. When Congress provided, "If it is made to appear by affidavits or otherwise to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial," it left no room for doubt respecting its intention to authorize the issuance of injunctions without notice which were to continue until "the conclusion of the trial." In the present suit it appeared that defendant answered the bill of complaint, never sought to modify or vacate the "writ of injunction," and while the suit was thus pending and before its trial committed the alleged contempt.

Aside from this, however, it would seem that, at most, the failure to give notice was a mere irregularity. Aside from the provisions of the National

Prohibition Act, the District Court had a general jurisdiction to entertain a suit by the United States to abate a nuisance, to issue an injunction in connection with that suit, and to punish any one who violated it, and according to well-settled principles no one may with impunity violate an injunction under such circumstances. He must either obey it or apply in an orderly way to have it vacated or modified. In the case of *Howat* v. *United States,* 258 U. S. 181, this Court, speaking by Mr. Chief Justice Taft, said (pp. 189–190):

> An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished. *Gompers* v. *Bucks Stove & Range Co.,* 221 U. S. 418, 450; *Toy Toy* v. *Hopkins,* 212 U. S. 542, 548. See also *United States* v. *Shipp,* 203 U. S. 563, 573.

CONCLUSION

We have treated the points raised by the appellant at some length. Nevertheless we feel that they are wholly without merit and present no such substantial constitutional question as justifies invoking the jurisdiction of this Court by direct appeal, and for that reason this Court may well dismiss the appeal as for want of jurisdiction upon the authority of *Wise* v. *Mills,* 220 U. S. 549; *Wise* v. *Henkel,* 220 U. S. 556; *Farrell* v. *O'Brien,* 199 U. S. 89, 100; *Toop* v. *Ulysses Land Co.,* 237 U. S. 580, 583; *Piedmont Power & Light Co.* v. *Graham,* 253 U. S. 193, 195; *Sugarman* v. *United States,* 249 U. S. 182.

That a writ of *habeas corpus* may not be used *in place of* a writ of error has been said many times. See *Collins* v. *Johnson,* 237 U. S. 502; *Craig* v. *Hecht,* 263 U. S. 525.

It would seem to be equally true that its use, *in addition to* a writ of error, should not be sanctioned. No point is here raised which could not have been raised by writ of error to the judgment of conviction. The question of the validity of the statute on which a charge is based is one for the determination of the trial court to be reviewed by writ of error. *Henry* v. *Henkel,* 235 U. S. 219, 229.

When there came to be a right to comprehensive review of criminal cases, the scope of inquiry deemed admissible on *habeas corpus* became relatively narrow. *Salinger* v. *Loisel,* 265 U. S. 224, 231.

After review of the judgment by writ of error, to seek a further review by writ of *habeas corpus,* is an abuse of process which should not be sanctioned. The refusal of the trial court and of this Court to admit the appellant to bail pending appeal has prevented the travesty upon justice which would have resulted had he been at large all these months. It has, however, inflicted unnecessary and unreasonable labor upon the courts and everybody concerned.

For these reasons the appeal should be dismissed for want of jurisdiction, or the judgment should be affirmed.

WILLIAM D. MITCHELL,
Solicitor General.
ALFRED A. WHEAT,
Special Assistant to the Attorney General.
OCTOBER, 1925.

○